

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IMPLICIT, LLC,

Plaintiff,

v.

FORTINET, INC.,

Defendant.

C.A. No. 1:21-cv-00459-MN

**STIPULATION AND [PROPOSED] ORDER TO STAY
PENDING IMPLICIT’S NETSCOUT APPEAL**

WHEREAS, on April 22, 2020, the United States District Court for the Eastern District of Texas (the “E.D. Texas Court”) issued an Order (D.I. 252) in consolidated Case No. 2:19-cv-00040-JRG-RSP (E.D. Texas) transferring this case filed by Plaintiff Implicit, LLC (“Implicit”) against Defendant Fortinet, Inc. (“Fortinet”) (collectively, the “Parties”) to this Court;

WHEREAS, on June 3, 2020, Implicit filed an appeal (D.I. 272) to the United States Court of Appeals to the Federal Circuit (“Federal Circuit”) of the E.D. Texas Court’s December 16, 2019 Final Judgment against Implicit (D.I. 225) in Case No. 2:18-cv-00053-JRG (E.D. Texas) (the “NetScout Appeal”), including an appeal of claim construction rulings on claim terms that appear in all of the asserted patents in this case;

WHEREAS, on April 13, 2021, Implicit filed its opening brief (D.I. 25) in the aforementioned appeal in the NetScout Appeal, captioned in the Federal Circuit as *Implicit, LLC v. NetScout Systems, Inc.*, Nos. 20-1976, 20-2045 (Fed. Cir.);

WHEREAS, the parties have conferred and agree that the NetScout Appeal is addressed to several claim construction issues on the overlapping patents with this case, which therefore are directly relevant to this case, and, therefore, a stay of this case during the pendency of the NetScout

Appeal, including any further appeals by Implicit or NetScout, is in the best interest of the Parties and promotes judicial economy;

NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, subject to the approval of the Court, that:

1. The above-captioned case is stayed until such time as the NetScout Appeal, including any further appeal by Implicit or NetScout, has been resolved or otherwise terminated; and

2. The parties shall submit a joint status report, with their respective proposals as to next steps, within 30 days after the NetScout Appeal, including any further appeal by Implicit or NetScout, has been resolved or otherwise terminated.

Dated: May 6, 2021

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Attorneys for Plaintiff Implicit LLC

SO ORDERED this _____ day of _____, 2021.

United States District Judge